



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

September 24, 2010

The Honorable Shari T. Wilson
Secretary
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Dear Secretary Wilson:

Thank you for the submission of Maryland's draft Phase I Watershed Implementation Plan (WIP) to the U.S. Environmental Protection Agency (EPA) on September 1, 2010. I greatly appreciate the efforts of the Governor's Office and the Maryland Departments of the Environment, Natural Resources, Agriculture, and Planning in preparing the WIP.

This letter outlines the process EPA used to evaluate the draft Phase I WIPs, as well as the methods used to develop the backstop allocations for the draft Total Maximum Daily Load (TMDL). It also includes the next steps needed to finalize the WIPs in preparation for the November 29, 2010 deadline.

I am pleased to inform you that Maryland's WIP met the statewide nitrogen, phosphorus and sediment allocations announced July 1, 2010 and August 13, 2010. While the WIP did not achieve the allocations within each of the five Maryland basins, I understand that Maryland will be submitting a revised set of allocations that are designed to meet the July 1 and August 13 allocations in each basin. Thank you for these planned revisions. Although we cannot incorporate the revised numbers into the draft TMDL that will be released for public notice today, these numbers can be incorporated into the final WIP and TMDL upon verification. Maryland is leading by example in its efforts to quickly address these minor issues.

Enclosed, please find a two-page summary of EPA's evaluation of Maryland's WIP and the draft allocations that EPA is establishing in Maryland to ensure that practices are in place by 2017 to achieve 60 percent of the necessary nutrient and sediment reductions, and by 2025 to meet the TMDL allocations. Achieving these restoration milestones will not be easy and requires the leadership and commitment from federal, state, and local governments within the Chesapeake Bay Watershed. The enclosed summary provides additional details supporting EPA's finding that while Maryland submitted the most substantive WIP of any jurisdiction, our review of the gap-filling strategies did reveal minor deficiencies.



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EPA conducted a rigorous evaluation of the seven Bay jurisdictions' draft WIP documents and input deck submissions. EPA used the WIP input deck to run jurisdictions' proposed practices through Scenario Builder and the Chesapeake Bay Watershed Model to project the nutrient and sediment loads that would be delivered to the Bay. For each major source sector, EPA evaluated whether proposed gap-filling strategies through 2017 met expectations; contained some minor deficiencies; contained serious deficiencies; or was inadequate compared to the expectations set forth in a November 4, 2009 letter to the Principals' Staff Committee and the April 2, 2010 *Guide for EPA's Evaluation of Phase I Watershed Implementation Plans*. Based on these expectations and model analysis, the WIP Evaluation Team asked whether:

- the draft WIP demonstrated that the jurisdiction would meet its nitrogen, phosphorus and sediment allocations assigned on July 1 and August 13 at the jurisdiction-wide and major river basin scales;
- a major pollutant loading source sector had serious deficiencies within its gap-filling strategies to reach the 2017 Interim Target;
- the proposed wasteload allocations (WLAs) in the draft WIP could be achieved through implementation of a permitting program; and
- EPA's own assurance, based upon its federal legal authorities, could ensure achievement of the backstopped point source reductions through enhanced program oversight, permit objections, compliance assurance, and enforcement actions.

In instances where draft WIPs do not achieve the basin-level nutrient and sediment allocations or where they do not provide reasonable assurance that the point and nonpoint source reductions could be achieved, EPA will establish backstop allocations that would replace proposed WLAs for point sources with more stringent or appropriate point source limits. This has not been necessary in the current draft TMDL for Maryland. Where possible, EPA is redistributing point source loads to nonpoint source sectors with insufficient reasonable assurance. EPA is assuming additional nonpoint source reductions as necessary to meet the July 1 and August 13 nutrient and sediment load allocations.

Based on our evaluation, EPA is establishing minor, moderate, or high level backstop allocations in all jurisdictions. EPA is establishing minor backstop allocations in Maryland's draft TMDL so that each of the five Maryland basins meet the July 1 and August 13 nutrient and sediment allocations. The final WIP should include more specific proposals including resources, authorities and implementation schedules from among the options that are listed in the draft WIP. EPA is particularly interested in additional details on strategies to reduce loads from the agricultural sector. These assumptions and areas for improvement highlighted in EPA's WIP evaluation are explained in the enclosure. I strongly encourage Maryland to continue working with EPA to address these items.



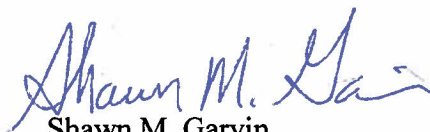
The Maryland Department of the Environment, working closely with its sister agencies and the citizens of Maryland, has the opportunity to strengthen the final Phase I WIPs, which are due to EPA on November 29. At that point, EPA will determine if the minor backstop adjustments can be removed. Throughout this process, EPA staff will share best practices identified in the other WIPs and provide additional technical and programmatic assistance.

Mr. Jon Capacasa, Director of Region III's Water Protection Division, will be sending a more detailed document to you next week that further explains EPA's feedback on Maryland's WIP. In addition, my staff will be scheduling a half-day meeting in next few weeks with the state agencies involved in WIP development to discuss our evaluation, answer questions and map a path forward to strengthen Maryland's Phase I WIP and the final TMDL allocations.

EPA is also pleased to announce the beginning of the public review and comment period for the Bay TMDL starting today, September 24, 2010. EPA has established a public docket for this Notice under Docket ID No. EPA-R03-OW-2010-0736. The Draft Bay TMDL is available in the docket at <http://www.regulations.gov>. Assistance and tips for accessing the docket can be found at <http://www.epa.gov/chesapeakebaytmdl>. Comments will be accepted through <http://www.regulations.gov> and by mail. Links to the jurisdictions' WIPs are available at <http://www.epa.gov/chesapeakebaytmdl>.

I forward look to our continued dialogue as we work toward a revised WIP and final TMDL. These past 25 years have shown us that although we have achieved successes in the Bay restoration, violations to water quality standards persist that threaten this national treasure. Although the Bay TMDL and WIPs are just two of the many actions we are taking to restore and preserve the overall health of the Chesapeake Bay, our success in doing so is dependent upon these commitments.

Sincerely,



Shawn M. Garvin
Regional Administrator

Enclosure

cc: Honorable Earl Hance
Honorable Richard Hall
Honorable John Griffin

